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FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

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OFFICE OF PETITIONS

In re Application of Gomi et al. :
Application No. 09/464,161 : Letter on PTA
Filing Date: December 16, 1999 :
Attorney Docket No. 09812.0621-00000 :

This is a decision in response to the "Notice of Error in the Determination of Patent Term Adjustment," filed on January 6, 2006. Pursuant to applicants' duty of good faith and candor to the Office, applicants request that the determination of patent term adjustment be reviewed for accuracy.

The request for review of the determination of patent term adjustment (PTA) is **dismissed**.

The Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application on November 3, 2005. Applicants were advised of a patent term adjustment to date of 119 days. In response, applicants timely filed the instant request for reconsideration of the patent term adjustment.

The basis for applicants' disagreement with the patent term adjustment of 119 days appears to be a belief that the application is ineligible for patent term adjustment. The request states,

Based on Applicants' calculation, the correct patent term adjustment period is 0 days, as patent term adjustment is not applicable to this patent application.

A review of the record supports the conclusion that the application is eligible for patent term adjustment.

A continued prosecution application (CPA) was filed in the application on September 24, 2002. The filing of a CPA application on or after May 29, 2000, in an application filed before May 29, 2000 causes the application (CPA) to be eligible for patent term adjustment.

Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term; Final Rule, 65 Fed. Reg. 56,366, 53,385 (September 18, 2000), 1239 Off. Gaz. Pat. Office 14 (October 3, 2000):

The filing date of a continued prosecution application (CPA) under 1.53(d) is the date that the request for CPA is filed (§ 1.53(d)(2)), even though the Office uses the filing date

of the prior application for identification purposes. Therefore, the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by 4402 of the American Inventors Protection Act of 1999 apply to any CPA filed on or after May 29, 2000, regardless of the filing date of the prior application of the CPA. While an applicant may file a continuing application under 1.53(b) on or after May 29, 2000, for the application to be subject to the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by § 4402 of the American Inventors Protection Act of 1999, an applicant need only file a CPA under § 1.53(d) on or after May 29, 2000, for the application to be subject to the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by § 4402 of the American Inventors Protection Act of 1999. The filing of a CPA on or after May 29, 2000, does not, however, entitle an applicant to receive term adjustment for Office delays before the filing date of the CPA (i.e., before May 29, 2000).

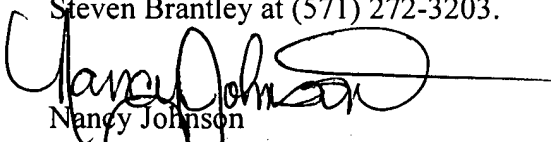
For the reasons discussed above, the application is eligible for patent term adjustment. The application history has been reviewed and it has been determined that the initial patent term adjustment of 119 days was correct. A copy of the PAIR calculations for this application is enclosed. Applicant continues to be under a duty to advise the Office of any error in according too much PTA.

The Patent Term Adjustment remains 119 days.

The instant letter was the result of the good faith and candor of applicants. Since the instant letter was only filed to advise the Office of an Office error, and not to increase the patent term adjustment, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e).

The application file is being forwarded to Technology Center Art Unit 2629 for entry and consideration of the Request for Continued Examination (RCE) filed on January 27, 2006.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: PAIR screen for U.S. Application No. 09/464,161